

## Chapter 3 A: Domestic Purchase Orders

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## **CHAPTER OVERVIEW**

### **Purchase Orders**

This section covers Tuesday Morning requirements from the vendor to process a Purchase Order. When a purchasing agreement between a Tuesday Morning buyer and vendor is reached, the Tuesday Morning buyer will provide a Purchase Order (PO) number. This PO number is to be used in all correspondence between the vendor and Tuesday Morning regarding that Purchase Order. If a vendor has multiple purchasing agreements with Tuesday Morning, each agreement will be identified by a separate PO number.

After the Tuesday Morning buyer receives and agrees with the vendor's line sheet detail, a Tuesday Morning system generated Purchase Order will be created as a binding agreement using the Purchase Order Number. A final authorized copy will be sent via E-mail to the vendor.

Please be advised Tuesday Morning does not pay any cost related to the vendor samples. This includes the samples and the cost associated with shipping. Unless there have been previous arrangements with the buyer, if the vendor requires their samples returned, the vendor must pay for shipping.

If you wish to have your samples returned, you must supply a valid Federal Express or UPS account number and current mailing address.

All samples submitted to Tuesday Morning must be marked with the following:

- Vendor Name
- Mfg Style #

**The purchase order format example further in this section, points out specific field requirements with an abbreviated description of each.**

A signed Vendor Manual acknowledgement form must be completed accurately and be on file with Tuesday Morning prior to receiving a Purchase Order. The Vendor Manual acknowledgement form serves as a "standing" record providing Tuesday Morning the vendor's business information and acknowledgement the vendor has read and will comply with the Tuesday Morning PO Terms and Conditions for each Purchase Order they receive. Purchase Order Terms and Conditions will not be attached to each Purchase Order.

The signed document will remain on file until replaced or changed by either party.

## Purchase Order Guide – Page 1

<b>Tuesday Morning</b> <i>First Quality. Legendary Savings.</i>	<b>A</b> B C D E F G H I J K L M N O	<b>Purchase Order Information</b>	<b>P</b>	<b>Vendor Information</b>
(Billing Address): 6250 LBJ Freeway Dallas, TX 75240 Phone: 972-387-3562 Buyer's Fax: 972-991-5403		PO Number: 319792 PO Type: Domestic PO Description: SYMPHONY & HARPER Order Date: 03/04/2013 Revision No: Revision Date: 05/17/2013 Ship Date: 03/08/2013 Cancel Date: 03/15/2013 Target Week: 2013/16 Terms: NET 60 ROG FOB: NY Buyer: 26 - STEPHANIE DEAN Pre-Ticket: N Drop Ship: N		Vendor: X0001 Vendor Name: VENDOR COMPANY NAME Address: 1234 GRANDBURY LANE  City: TOWNVILLE State: TX Zip: 78556 Vendor Contact Name: JOHN SMITH  Phone: 972-555-4845 Fax: 972-555-8869 Email: JSMITH@VENDORCOMPANY.COM
Report Name: TMVendorPOPrint				
<b>Vendor Instructions</b>	<b>Q</b>	<ol style="list-style-type: none"> <li>1. Ship to Address - 14325 Gillis Road, Farmers Branch, Texas 75244; Phone n/a; Fax n/a.</li> <li>2. Complete a Transportation Routing Form for each PO trailer and return Inbound Transportation via email at <a href="mailto:trafficinbound@TuesdayMorning.com">trafficinbound@TuesdayMorning.com</a> or Fax to 972-233-5327.</li> <li>3. Outside cartons must be clearly marked with PO Number, Line Number, Manufacturing Style Number and Quantity.</li> <li>4. Packing list must be attached to the front of the last carton loaded.</li> <li>5. Pack only one Purchase Order Number/Line #/TM SKU# per carton unless otherwise instructed.</li> <li>6. Pallets must be under 52 inches in height.</li> <li>7. Vendor agrees to all Terms and Conditions of Purchase Order and Vendor Shipping Guidelines.</li> </ol>		
Specific Purchase Order instructions to the Vendor for this Purchase Order include:	<b>R</b>	ALL FIRST QUALITY GOODS ONLY.		



**PO Terms and Definitions**

KEY	PURCHASE ORDER FIELD	DEFINITION (SEE PO FORMAT EXAMPLE)
A	TM Corporate Information	Tuesday Morning Corporate Address and Phone Numbers
B	PO Number	TM assigned PO number. Reference the specific PO # in any correspondence between Vendor and TM
C	PO Type	Indicates type of PO (Domestic-sourced within the US, Import-sourced from outside the US, and POE-sourced from the vendor and possession is taken at the point of entry into the US)
D	PO Description	TM description of the PO
E	Order Date	Date the order was written
F	Revision No	Number of revisions to the PO
G	Revision Date	Date of the last revision
H	Ship Date	First date merchandise needs to be available to ship/pick-up
I	Cancel Date	Last possible date to be shipped/picked-up (Orders will not be accepted beyond this date)
J	Target Week	TM assigned week number
K	Terms	Payment Terms of the purchase order agreed upon by both the Buyer and Seller
L	FOB	Pick-up location (show state in which pick-up will be made), POE - show port and state. For Drop Ship orders - show "Direct to Store" as FOB. For Internet vendor filled orders - show "Vendor Fulfilled"
M	Buyer	Identifies TM Buyer by number and name who wrote the PO
N	Pre-Ticket	Indicates whether the order contains items for which the Vendor will be applying tickets on Tuesday Morning's behalf (Y or N)
O	Drop Ship	Indicates the order contains items for which the Vendor will be sending directly to TM retail stores
P	Vendor Information	Information related to vendor including number, name, address, and contact information. Include vendor number on invoices and when calling AP regarding an invoice.
Q	Vendor Instructions	Instructions for the vendor to follow that pertain to Traffic, Carton markings, packing, etc.
R	Purchase Order Instructions	Specific notes, instructions or directive to Vendor pertaining to this specific Purchase Order
S	Line #	The specific line number for the item on the PO
T	Status	Status of ordered item - new, cancelled
U	Mfg Style #	Vendor style number (always include this info on each carton label and packing slip)
V	TM SKU #	Tuesday Morning assigned item number
W	Description	Short description of product as shown on the product
X	Feature - Color/Size	TM Color Family and Vendor product Size

Y	Purch Unit (EA/IP/MP)	Units by which the item will be purchased (EA=Eaches, IP=Inner packs, MP=Master Packs)
Z	RU	Retail Unit
AA	RUM	Retail Unit of Measure
BB	Expiry Date	Product Expiration Date
CC	Purch Qty	Qty buyer has agreed to purchase from Seller
DD	Open Qty	Qty open to ship
EE	Rec'd Qty	Qty already received by TM
FF	TM Cost (\$)	Price the Buyer and Seller have agreed upon for each purchase unit
GG	Comp Rtl (\$)	Comparable retail price of the item as sold in regular priced retail stores
HH	Comp Sale Rtl (\$)	Comparable marked-down retail price of the items sold in regular priced retail stores
II	Extended Cost (\$)	Purchase Qty multiplied by the TM Cost for the line item
JJ	IP/MP	Number retail units in the sub-pack inside the master pack, Number retail units in the whole carton
KK	Length (in)/ Weight (in)	Length in inches of retail item / Width in inches of retail item if applicable
LL	Height(in)/ Weight(lb/oz)	Height in inches of retail item / Weight in pounds and ounces of retail item / Weight in ounces of the retail item if applicable
MM	Total Purch Qty	Total number of purchasing units for the entire order
NN	Total Extended Cost (\$)	Total cost of all purchasing units for the entire order

## **DOMESTIC – PURCHASE ORDER TERMS AND CONDITIONS**

The Tuesday Morning Purchase Order Terms & Conditions must be reviewed carefully, and vendor must ensure all products presented to and purchased by Tuesday Morning are in compliance with all applicable Federal and State laws and regulations, and specifications and other contract terms pertaining to the Goods, and that the Goods are labeled accordingly.

An acknowledgement form must be signed and be on file with Tuesday Morning before receiving an official purchase order. The acknowledgement will serve as a “standing record” of receipt and intent to comply with the Purchase Order Terms and Conditions contained herein. Tuesday Morning will maintain and file signed Acknowledgement until it is revised or replaced by mutual agreement of the parties.

Existing Vendor Price on Product- Tuesday Morning will only accept other retailers’ tickets on merchandise from select stores. It is the vendor’s responsibility to notify the Buyer, prior to shipping merchandise, if the Goods contain existing retailers’ tickets on products. Violations of this rule will result in chargebacks. The buyer must be made aware of any merchandise with existing price tickets and comparative price values at both full and sale price. Failure to have the information can result in merchandise returned to the vendor, request for cost adjustments based on existing prices in vendor’s line sheet detail, and/or expenses deducted for necessary corrections.

All Purchase Orders must be routed 48 hours prior to the ship date. All products in Purchase Orders must be shipped within the ship window assigned by the buyer and listed on the Purchase Order. Please reference page 192 for shipping window example.

Packing and Carton Label Requirements – The specific Purchase Order #, SKU #, Mfg. style #, Inner-pack and Master-pack quantities *must* be shown on each carton label. Inner-pack and master pack must match what Tuesday Morning receives. Each carton must contain only one SKU/Mfg style # from the Purchase Order. Same style, different color items must be marked with color on each label. Mixed cartons (more than one SKU or mfg. style #) are not permitted except when the Tuesday Morning buyer has designated an order as “assorted” and cartons are well marked. The Carton Packing & Labeling Section includes all information required to ensure proper packing and labeling. Any exception(s) must be approved by the Tuesday Morning designated agent.

Shipping Documents – A packing list must be attached to every PO shipment to facilitate the receipt process and to ensure appropriate vendor payment. Missing PO #, SKU #, Mfg Style # slows receiving down considerably and makes it especially difficult when Purchase Orders have numerous line items. The Shipping Document Requirements Section should be copied and distributed to those vendor employees responsible for shipping documents.

## **PURCHASE ORDER TERMS AND CONDITIONS**

### **1. THE PURCHASE ORDER**

Vendor hereby agrees to sell and deliver, and Tuesday Morning hereby agrees to purchase and accept from vendor, the merchandise described on a Purchase Order ("Goods") in conformance with the price and specifications thereon and subject to all terms and conditions set forth in this Vendor Manual. A Purchase Order is an offer by Tuesday Morning to purchase the Goods, and vendor and Tuesday Morning agree that the order shall be subject to the terms and conditions presented in this Vendor Manual. BUYER'S OFFER OF A PURCHASE ORDER IS CONDITIONED UPON VENDOR'S ASSENT TO ALL OF THE TERMS AND CONDITIONS HEREOF AND IS LIMITED TO THE TERMS AND CONDITIONS SET FORTH HEREIN. Acceptance, confirmations, invoices, or other communications of vendor shall be operative as an acceptance of a Purchase Order; provided, however, that any additional or different terms shall be deemed material alterations within the meaning of Section 2.207(b)(2) of the Texas Business and Commerce Code, and Tuesday Morning hereby expressly provides notice of objection to any additional or different terms regardless whether such additional or different terms are held to be material alterations or appear in any past or future communications. Acknowledgement of a Purchase Order or commencement of the performance contemplated hereunder by vendor constitutes acceptance by vendor of the Purchase Order and all terms and conditions hereof, as submitted by Tuesday Morning, as a binding contract which may be modified or amended only by a writing signed by both parties hereto.

### **2. PURCHASE ORDER REQUIREMENT**

A Purchase Order is not valid unless it has been generated by Tuesday Morning's system and sent from an authorized agent of Tuesday Morning. Accordingly, Tuesday Morning shall have no liability for any Goods "put in work" or shipments made by the vendor prior to issuance of an authorized Purchase Order meeting the foregoing copy requirements.

### **3. F.O.B.**

It is agreed that the term F.O.B. as used herein shall mean the shipment origination point indicated on the face of the Purchase Order, notwithstanding the fact that Tuesday Morning shall have specified common carriers to be used by vendors and/or delivery to a consolidation point. Vendor is required to call and confirm shipping instructions with the Tuesday Morning traffic department prior to shipment.



**4. PAYMENT TERMS**

- a. The period by the end of which vendor's invoices shall be paid shall commence on the date the Goods are actually received by Tuesday Morning.
- b. Tuesday Morning's terms of payment are 60 days after receipt of goods.
- c. In the event Goods are received by Tuesday Morning prior to the indicated "Ship Date" indicated on the face hereof, said "Ship Date" shall be utilized to compute the invoice payment date in lieu of the date the Goods are received.
- d. In no event shall payment periods commence running until an invoice for the Goods is received.

**5. BUSINESS INTERRUPTION**

Tuesday Morning reserves the right to cancel all or part of any Purchase Order with respect to Goods covered by it which have not actually been shipped by vendor in the event that the business of Tuesday Morning is interrupted, or is, in Tuesday Morning's good faith judgment, likely to be interrupted, because of actual or reasonably expectable strikes, labor disturbances, or lockouts; or because of fire, acts of nature, terrorism, or of the public enemy; or because of any other cause whether like or unlike the foregoing, if outside the reasonable control of Tuesday Morning. In the event of such cancellation, the obligation of Tuesday Morning shall be limited to that portion of the purchase price and associated costs payable by Tuesday Morning under the Purchase Order which is attributable to those Goods as to which the Purchase Order shall not have been cancelled by Tuesday Morning.

**6. TIME OF THE ESSENCE; NOTIFICATION REQUIREMENTS**

Time is of the essence for vendor's performance under each Purchase Order. If vendor, at any time, shall be unable, or should reasonably anticipate being unable to deliver any part or all of the Goods called for by any Purchase Order in accordance with the terms hereof, vendor shall notify Tuesday Morning of such inability at the earliest possible time and by the most practical means under the circumstances. Such notification shall be made to the applicable Tuesday Morning Buyer, Divisional Merchandise Manager, or the EVP, General Merchandise Manager. Compliance by vendor with the above notification requirements shall not, however, be deemed to operate as a release of vendor from its liabilities under the law for non-performance of its obligations hereunder except to the extent that such non-performance maybe excused or justified (provided said notification was made by vendor) by factors beyond the reasonable control of vendor.

**7. TUESDAY MORNING'S RIGHT TO REFUSE GOODS**

In addition to all other rights and remedies provided by law, Tuesday Morning may, within 90 days of delivery, refuse and return all or any part of the Goods, at vendor's expense and without vendor's authorization with respect to:

- a. Any shipment (or portions thereof) made before the "Ship Date" or after the "Cancellation Date" specified on the face of the order;

- b. Any shipment (or portions thereof) if the quantity shipped is in excess or short of the quantity ordered;
- c. Goods (or portions thereof) which do not conform to the sample or which are not as specified in the Purchase Order;
- d. Goods (or portions thereof) which are not as represented or warranted;
- e. Goods do not comply with government labeling laws or product safety laws;
- f. Goods fail to comply with requirements set forth in Section II, herein; and
- g. Goods (or portions thereof) that are second, irregular or inferior, or are otherwise contrary to the provision of the Purchase Order.

Tuesday Morning, at its option, may store rejected Goods at vendor's sole expense and risk of loss. Tuesday Morning shall notify vendor, in writing, of its intent to store such Goods and the storage charge to be charged; and thereupon vendor agrees to pay such charges.

**8. WARRANTIES, COMPLIANCE WITH LAWS, INDEMNIFICATION, INSURANCE, AND SETOFF**

- a. Vendor warrants that the Goods, including, but not limited to, the package and the label shipped pursuant to the Purchase Order:
  - i. SHALL BE COVERED BY AND SUBJECT TO ALL RIGHTS AND REMEDIES ASSOCIATED WITH ALL EXPRESS AND IMPLIED WARRANTIES BETWEEN VENDOR AND TUESDAY MORNING, WHETHER SUCH WARRANTIES ARE PROVIDED FOR BY AGREEMENT THE UNIFORM COMMERCIAL CODE OR ANY OTHER APPLICABLE LAW, AND INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE GOODS AND THEIR FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN, OPERATIONS, AND CONDITION OF THE GOODS; THE QUALITY AND CAPACITY OF THE GOODS; THE WORKMANSHIP OF THE GOODS; COMPLIANCE OF THE GOODS WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; INTELLECTUAL PROPERTY INFRINGEMENT; AND ABSENCE OF LATENT DEFECTS.
  - ii. Shall have been produced in compliance with, and meet the minimum standards of, all applicable federal, state, and local laws, regulations, rules, guides, ordinances, and/or standards (including, without limitation, the Federal Fair Labor Standards Act, Consumer Product Safety Act, California Proposition 65, Poison Prevention Packaging Act, Radiation Control for Health and Safety Act, Hazardous Substances Act, Flammable Fabrics Act, Food Drug & Cosmetics Act, Magnuson-Moss Warranty Act, Federal Trade Commission Improvement Act, and all amendments, rules, regulations, and/or standards applicable thereto) in effect as of the date of acceptance of such Goods by Tuesday Morning, as the term acceptance is defined by the Texas Business and Commercial Code Title 1, et seq. and that such Goods and the sale thereof by Tuesday Morning does not and will not, violate any such law;
  - iii. Shall be labeled in accordance with, and comply with, the requirements of such of the federal, state, and local labeling laws, regulations, rules, guides,

ordinances, and/or standards (including, without limitation, the Federal Wool Products Labeling Act, Fur Products Labeling Act, Textile Fiber Products Identification Act, Hazardous Substances Act, Flammable Fabrics Act, Care Labeling Rule, Consumer Product Safety Act, California Proposition 65, Food Drug & Cosmetics Act, Magnuson-Moss Warranty Act, Federal Trade Commission Improvement Act, and Fair Packaging and Labeling Act) as shall be applicable to such Goods on the date accepted by Tuesday Morning, as the term acceptance is defined by the Texas Business and Commercial Code Title 1, et seq.;

- iv. Shall, where applicable, be accompanied by such other material necessary for the Goods and/or Tuesday Morning to comply with the laws, regulations, rules, guidelines, ordinances, and/or standards referred to in 8(a)(i-iii) above;
- v. Do not, and are not claimed to, violate any patent, trademark, copyright, or other intellectual property or proprietary right, and may be properly imported into and/or sold in the United States;
- vi. Shall be conveyed with good title and free and clear of any liens or encumbrances of any kind; and
- vii. Shall be manufactured in compliance with all applicable federal, state, and local laws, regulations, industry standards or other standards, labeling, transporting, licensing, approval, or certification requirements in the United States and the respective country of manufacture.

If Tuesday Morning experiences any breach of the foregoing warranties, Tuesday Morning shall have the right, in addition to all other rights Tuesday Morning may have under the Uniform Commercial Code and any other applicable statute and court decisions, to take the following actions, at Tuesday morning's option: (1) retain the defective Goods or services in whole or in part with an appropriate adjustment in the price for the Goods, (2) require vendor to repair or replace the defective Goods at vendor's sole expense, including all shipping and transportation costs, (3) correct or replace the defective Goods with similar items and recover the total cost relating thereto from vendor, including the cost of recalls of Goods, whether voluntary or involuntary, or (4) reject the defective Goods.

- b. Upon notice and demand from Tuesday Morning, vendor agrees to promptly assume full responsibility for the defense of any assertion, suit, proceeding, or claim that may be brought against any of the Indemnitees (as defined in clause (c) below), in the United States or any other country, arising from or related to any: (i) breach of any warranty, representation, or condition set forth in Section 8(a) above, (ii) infringement of any patent, copyright, trademark, or other intellectual property or proprietary right, or misappropriation of any trade secret or other intellectual property, of a third party, or any allegation of any such infringement or misappropriation, (iii) unfair competition resulting from similarity in design, trademark, or appearance of Goods delivered or services rendered under the order or any allegation of such unfair competition, and/or (iv) violation of applicable law, regulations, rules, or court or government orders,

negligence (regardless of any comparative or contributory negligence of another), or willful misconduct of vendor or any of its employees or agents, or any allegation thereof; provided that vendor shall not settle any such assertion, suit, proceeding, or claim without Tuesday Morning's express prior written consent. Vendor further agrees to indemnify and hold harmless each of the Indemnitees from and against any and all losses, royalties, profits, damages, and expenses (including, without limitation, court costs and reasonable attorneys' and witness' fees and other defense costs) resulting from any such assertion, suit, proceeding, or claim, including, without limitation, any such settlement.

- c. To the full extent permitted by applicable law and independent of any insurance, vendor agrees to indemnify, hold harmless and defend Tuesday Morning and its affiliated companies, their directors, officers, employees, successors, assigns, agents, attorneys, and customers ("Indemnitees") from and against any and all damages, losses, claims liabilities, expenses (including but not limited to court costs and attorney fees, settlements, judgments, punitive and exemplary damages, product recall/market withdrawal costs, economic loss and loss of profits, fines, and penalties) arising out of or resulting in any way from any defect in the Goods or for any failure to properly label the Goods; or any injury (including death) to any person or damage to property caused by vendor, its employees, agents, or subcontractors ("vendor and its representatives"); or any act or omission in the performance of a Purchase Order; vendor's breach of any warranty or other provision of a Purchase Order; or Tuesday Morning's termination of Purchase Order. This indemnification obligation shall be in addition to vendor's warranty obligations. THIS INDEMNITY IS SPECIFICALLY INTENDED TO OPERATE AND BE APPLICABLE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED AS A WHOLE OR IN PART BY ANY ACT, OMISSION, NEGLIGENCE, GROSS NEGLIGENCE, BREACH OF CONTRACT, INTENTIONAL CONDUCT, VIOLATION OF STATUTE OR COMMON LAW, BREACH OF WARRANTY, PRODUCT DEFECT, STRICT LIABILITY, OR ANY OTHER CONDUCT WHATSOEVER OF VENDOR OR ANY OF ITS EMPLOYEES, AGENTS, OR SUBCONTRACTORS.
- d. Vendor agrees that, unless it shall have on file with the Federal Trade Commission or other appropriate governmental agency a continuing guaranty in conformity with the rules and regulations of the appropriate agency, and unless vendor's invoice or other appropriate document sets forth, in proper form and language, information, it shall include with each invoice a written guaranty specifying that the Goods covered by such invoice are not misbranded, or falsely or deceptively labeled, advertised, or invoiced and that they do comply with the terms and requirements of all applicable laws, regulations, rules, guides, ordinances, and/or standards governing the safety, labeling, advertising, or invoicing of such Goods.
- e. Vendor shall secure suitable products and contractual liability insurance coverage in adequate amounts, providing for the investigation, defense and satisfaction (by settlement or otherwise), at no cost to Tuesday Morning (or to any Indemnitees) of any and all claims, suits, liabilities, damages, costs and expenses, asserted against, or

incurred by, Tuesday Morning (or any Indemnitees), and shall furnish Tuesday Morning with a certificate evidencing such coverage. Minimum Requirement is \$1 million per occurrence. Additional insureds: "Tuesday Morning Partners, Ltd. and any parent or controlling corporations, subsidiaries, affiliates, related entities, and partners." The address should be listed as 6250 LBJ Freeway, Dallas, Texas, 75240.

- f. Any payments, expenses, or other amounts due to Tuesday Morning from vendor which have not been paid to Tuesday Morning within the applicable time period (which shall be a commercially reasonable time period unless otherwise provided for by written agreement with Tuesday Morning) may be set-off against any payments, expenses, or other amounts which are due to vendor from Tuesday Morning.

#### **9. GUARANTY OF PRICES**

Prices set forth on any Purchase Order are guaranteed by vendor against decline in the prices of the manufacturer or vendor for Goods or other comparable goods, and against the lower prices of legitimate competition for such Goods or other comparable goods until date of delivery. Vendor shall meet lower prices of legitimate competition or accept cancellation of the Purchase Order without damages of any kind accruing to Tuesday Morning as a result thereof. Vendor warrants and represents that any and all prices, advertising allowances, discounts, and other benefits, without limitation, offered to Tuesday morning, shall comply with all federal, state, and local laws (including, without limitation the Sherman, Clayton and Robinson Patman Acts), and all rules, regulations, and guides applicable thereto.

## **MISCELLANEOUS**

A waiver of and/or failure to perform any one or more of the conditions of a Purchase Order shall not constitute a waiver of or an excuse for non-performance by vendor to any other part of any other Purchase Order.

The rights and remedies herein expressly provided shall be in addition to any other rights and remedies provided by law.

Vendor hereby expressly covenants agrees and stipulates that all or any part of its obligations hereunder, including, but not limited to delivery of Goods are performable in Dallas County, Texas; vendor is placing Goods into the stream of commerce in Dallas County, Texas, such that vendor hereby consents to the jurisdiction of any state or federal court located within the State of Texas and waives any objections which vendor may have based on improper venue or *forum non conveniens* to the conduct of any proceeding in any such court; to the extent permissible by law, all lawsuits hereunder or arising from any transaction shall be brought in Dallas County, Texas; and this Vendor Manual shall be construed in all respects in accordance with, and governed by, the laws of the State of Texas, excluding

its conflict of laws provisions.

Whenever possible, each provision of this Vendor Manual shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Vendor Manual shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Vendor Manual.